

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

JOHN D. CARSON, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:17-cv-00237-RSB-CLR
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	
	)	

---

**PLAINTIFF'S CONSENT MOTION FOR LEAVE TO AMEND COMPLAINT  
TO ELIMINATE COUNTS I AND III AND FOR ENTRY OF FINAL JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff respectfully requests that the Court grant leave to amend his Complaint to eliminate Count I and Count III. On December 21, 2020, this Court issued an order dismissing Count II and Count IV in their entirety. ECF No. 49. Plaintiff requests leave to amend his Complaint to eliminate the remaining claims, so that the Court can enter an appealable final judgment.

Defendant consents to this amendment, and justice requires that it be permitted. *See* Fed. R. Civ. P. 15(a)(2) (“The court should freely give leave [to amend] when justice so requires.”). This motion is based on recent guidance by the Eleventh Circuit on the proper way “to dismiss a single claim without dismissing an entire action” so that an appealable final judgment may be entered. *Perry v. Schumacher Group of Louisiana*, 891 F.3d 954, 958 (11th Cir. 2018). The “most obvious [way] is to seek and obtain leave to amend the complaint to eliminate the remaining claim[s].” *Id.* When a plaintiff “wish[es] to seek immediate appellate review of the District Court’s disposition of” his other claims and is “willing to drop” his remaining claims, the Eleventh Circuit directed that this procedure be followed, stating that it “cannot foresee how leave to amend could be denied.” *Id.*; *see also Perry v. Schumacher Group of Louisiana*, 809 F. App’x 574, 578

(11th Cir. 2020) (“[W]e advised Dr. Perry how to appeal successfully: seek leave to amend the complaint under Rule 15 to eliminate the § 1981 claim against Naples HMA.”).

Amending the Complaint to eliminate Count I and Count III would, in the wake of the Court’s December 21, 2020 Order, dispose of all remaining counts asserted in the Complaint. Therefore, Plaintiff requests, with Defendant’s consent, that the Court promptly enter final judgment dismissing the Complaint pursuant to Federal Rule of Civil Procedure 58, with each party to bear his or its own costs and fees. Plaintiff reserves the right – and intends, following entry of final judgment – to appeal the portion of this Court’s December 21, 2020 Order (ECF No. 49) that dismissed Count II of the Complaint on federal preemption grounds.

In conclusion, for the foregoing reasons, the Court should grant this consent motion and issue the accompanying proposed order.

Dated: March 1, 2021

Respectfully submitted,

/s/ Ashleigh R. Madison  
Ashleigh R. Madison (GA Bar No. 346027)  
SOUTHEAST LAW, LLC  
2107 Bull Street  
Savannah, GA 31401  
Telephone: (912) 662.6612  
Email: southeastlaw@gmail.com

*Counsel for Plaintiff John D. Carson, Sr.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of March 2021, the foregoing was filed with the Clerk of the Court through the CM/ECF system, which will generate an electronic notification and effect service on all counsel of record.

/s/ Ashleigh R. Madison

*Counsel for Plaintiff*